

HOUSE No. 1633

By Ms. Candaras of Wilbraham, petition of Gale D. Candaras and others relative to infectious disease control. Public Health.

The Commonwealth of Massachusetts

PETITION OF:

Gale D. Candaras
Shirley Gomes

Benjamin Swan

In the Year Two Thousand and Five.

AN ACT RELATIVE TO INFECTIOUS DISEASE CONTROL.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 111 of the General Laws is hereby amended by adding
2 the following new section:

3 Section 111D. (a) Notwithstanding the provisions of any
4 general or special law to the contrary, any person exposed to the
5 blood or other bodily fluid of an offending person may petition
6 the superior court for an order compelling: (1) the production of
7 medical, insurance, or other records to determine the presence of
8 any infectious disease, as defined by the department of public
9 health, in the blood or other bodily fluid of the offending person;
10 and (2) the testing of the offender's blood for infectious disease.

11 (b) The court shall order the production of the medical, insur-
12 ance, or other records and may order the testing of the offender's
13 blood if: (1) exposure to the blood or other bodily fluid of the
14 offending person substantially threatens the health of the peti-
15 tioner; (2) the exposure to the blood or other bodily fluid is a
16 direct result of conduct by the offending person; and (3) reason-
17 able suspicion exists to believe that the conduct is or may be a
18 violation of state or federal criminal law, even if a criminal inves-
19 tigation or prosecution relating to the conduct has not been or will
20 not be commenced in the matter.

21 (c) The order of production shall direct the custodian of the
22 medical, insurance, or other records to produce immediately them
23 for in camera inspection by the court. After conducting the inspec-
24 tion of the records and blood test results, the court shall notify the
25 petitioner immediately of the presence or absence of an infectious
26 disease in the blood or other bodily fluid of the offending person.
27 The petitioner shall not disclose the identity of the offender, nor
28 shall the petitioner disclose the results of the test to any person,
29 except as otherwise necessary for the petitioner to receive medical
30 treatment.

31 (d) The court shall seal the records of the proceedings, includ-
32 ing any judicial decision, upon the conclusion of the proceedings.
33 The clerk shall take all necessary steps to ensure the confiden-
34 tiality of the sealed records. The court may allow publication of
35 its decision if it has removed the names of the petitioner and the
36 offending person from the decision.

37 (e) The court may enter an order of production only after the
38 offending person is given notice and an opportunity to be heard in
39 the matter. The hearing on the petition for the order may not com-
40 mence without the offender receiving notice of the hearing, or no
41 earlier than 48 hours after the offender receives the notice, unless
42 the petitioner demonstrates delay will result in immediate and
43 irreparable harm to the petitioner's health or the infeasibility of
44 providing notice to the offender.

45 (f) An order granting or denying the production of medical,
46 insurance, or other records or an order disclosing or refusing to
47 disclose the contents of the records to the petitioner is immedi-
48 ately subject to appeal and stays or injunctions pending appeal as
49 authorized by law.

50 (g) The court may award reasonable attorney fees, costs, and
51 expert witness expenses to any prevailing party in any action or
52 proceeding under this act. In awarding attorney fees and expert
53 witness expenses, the court shall take into account whether the
54 offending party, prior to the commencement of the hearing, volun-
55 tarily produced all medical, insurance, or other records for the
56 court's in camera inspection to determine the presence of an infec-
57 tious disease.

58 (h) The testing on the offender shall be performed under the
59 direction of the department of public health. The results of an

60 infectious disease test performed on the offender pursuant to this
61 section shall not be admissible in any criminal or juvenile pro-
62 ceeding arising out of the alleged offense. The identity of the
63 offender subject to testing shall be kept confidential in accordance
64 with the provisions of section 70 of chapter 111.

65 (i) Notwithstanding the provisions of any general law or special
66 law to the contrary, no hospital, or agent, employee, administrator,
67 doctor, official or other representative of a reporting institution
68 shall be held jointly or severally liable either as an institution, or
69 personally, for reporting in good faith pursuant to the require-
70 ments of this section. All parties, provided they have operated in
71 good faith, shall otherwise be afforded total immunity from civil
72 or criminal liability as a result of fulfilling the provisions of this
73 section.